

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 15th DAY OF JUNE 2011

BEFORE

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

W.P. NO.25840 OF 2010 (GM-RES)

BETWEEN:

1. THE COMMISSIONER OF POLICE
MYSORE CITY
MYSORE
2. THE DEPUTY COMMISSIONER OF POLICE (LAW &
ORDER) AND PUBLIC INFORMATION OFFICER
POLICE COMMISSIONER'S OFFICE
MYSORE CITY
MYSORE
3. THE POLICE INSPECTOR, C C R B
OFFICE OF THE COMMISSIONER OF POLICE
MYSORE CITY
MYSORE

... PETITIONERS

(By Sri.: R. DEVADASS, ADDL. GOVERNMENT ADVOCATE)

AND

1. KARNATAKA INFORMATION COMMISSION
REPRESENTED BY ITS REGISTRAR
M S BUILDING
BANGALORE
2. DR S ASHOK
"SWETHA CLINIC"

14TH CROSS, R P ROAD
NANJANGUD,
MYSORE DISTRICT

... RESPONDENTS

(By Sri.: L P SURESH, ADV., FOR R2)

THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS; QUASH THE ORDERS DATED 8.12.2009 AND 23.4.2010 PASSED BY THE KARNATAKA INFORMATION COMMISSION, BANGALORE IN K.I.C. 8440 PTN 2009 VIDE ANNEXURES-A & B, BY ALLOWING THIS WRIT PETITION.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

By the impugned orders Annexures-A and B, first respondent has directed the second petitioner herein to make available the case diaries in respect of Crime No.63/07, 64/07 and 65/07 for inspection of respondent No.2 herein. The aforementioned crimes are already investigated and charge-sheets are filed before the jurisdictional Court. The second respondent herein is the accused in the aforementioned crime numbers. He made an application under the Right to

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Information Act, 2005 seeking certain information from Public Information Officer, Police Commissioner's Officer, Mysore. Copy of the application is produced at Annexure-C to the writ petition. The Public Information Officer has issued endorsement as per Annexure-D dated 26.8.2009 stating that the respondent No.2 is not entitled for the documents as sought for under Section 161 or under Section 145 of the Indian Evidence Act, 1872. The application filed by second respondent vide Annexure-C reveals that he wants to peruse the case diaries maintained by the police during investigation. Being aggrieved by the endorsement Annexure-D, 2nd respondent filed appeal before the first respondent under RTI Act, 2005. The petitioners filed statement of objections before the first respondent and brought to the notice of the first respondent that the case diaries cannot be furnished to the accused even for inspection. Petitioners have even quoted the provisions of Cr.P.C. and Evidence

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Act in support of their contention. In spite of the same, an order came to be passed as per Annexure-A directing the 2nd petitioner to allow the 2nd respondent to inspect the case diaries pertaining to the aforementioned crimes on 30th December 2009, but the 2nd petitioner refused to furnish the case diaries for inspection of 2nd respondent. Thereafter, another order came to be passed as per Annexure-B dated 23.4.2010 against the petitioners directing the 2nd petitioner to make available the case diaries for perusal of the 2nd respondent.

2. Impugned orders are illegal and arbitrary. Law of the land specifically prohibits the accused in the criminal case from looking to the case diary, till the prosecution makes use of it during the course of trial. It is relevant to note the provisions of Section 172(3) of Cr.P.C. in this context, which reads thus:-

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Diary of proceedings in investigation-

- (1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation.
- (2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.
- (3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of



contradicting such police officer, the provisions of Section 161 or Section 145 as the case may be, of the Indian Evidence Act, 1872 shall apply.

3. From the above, it is clear that it is privilege of the Court to go through the case diary, if need be for the purpose of enquiry and trial. It cannot be used as evidence in the case. The accused or his agents are not entitled to call for such diaries and they are not entitled to peruse them merely because the Court has referred to them. Only, if the case diaries are used by the police officers for refreshing the memory and if the Court uses them for the purpose of contradicting such police officer, then the accused may request the Court for permission to peruse the case diary. In the matter on hand, the trial is yet to begin. Even the Court has not looked into the case diary. In this view of the matter, it is not open for the accused to inspect the case diaries maintained by the

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police. Hence, the impugned orders Annexures-A and B are liable to be quashed. Accordingly, the same stand quashed.

4. Writ petition is **allowed** accordingly.

Sd/-
JUDGE

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